IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4073 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHENGARBHAI GIRDHARBHAI THAKKAR,SINCE DECEASED THROUGH HEIR

Versus

RAMESHCHANDRA MORARJIBHAI KAKKAR

Appearance:

MR AJ PATEL for Petitioners

MR SURESH S PATEL for Respondent No. 1

MR LR POOJARI, AGP, for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 12/04/2001

ORAL JUDGEMENT

1. The petitioner is aggrieved by an order passed by Principal Secretary (Appeals), Revenue Department on 6.3.1992 in Revision Application No.SRD/BKP/BNS/2/91, allowing the revision and setting aside an order passed

by the District Development Officer on 7.8.1991, sanctioning the layout plan for a small commercial centre in respect of survey No.4 Paiki, admeasuring 952.75 sq. mts. of village Bhabhar, on certain conditions.

2. The facts, in brief, are that the petitioner had applied for sanctioning the layout plan for construction of a small commercial centre over revenue survey No.4 Paiki, a land admeasuring 952.75 sq. mts. of village Bhabhar and the District Development Officer, after taking into consideration the various requirements and after obtaining requisite opinion and recommendations, approved the said plan. Against that approval order, a third party, one Rameshchandra Morarjibhai Kakkad, respondent No.1 herein, preferred the aforesaid revision application alleging that the order impugned in that revision was passed without considering the relevant provisions of law and in breach of certain conditions. The Principal Secretary (Appeals), Revenue Department, was pleased to accept the revision application and set aside the order of the District Development Officer.

3. Heard learned advocate, Mr. A.J. Patel, for the petitioner and and learned Assistant Government Pleader, Mr. Poojari, for respondent No.2. Learned advocate for respondent No.1, Mr. S.S. Patel, has consistently remained absent in spite of the fact that learned advocate Mr. A.J. Patel has intimated him telephonically as well as in writing (as per the statement made at the Bar by Mr. A.J. Patel) about the matter being fixed for final hearing.

4. Mr. Patel has drawn attention of this Court to the report of the District Development Officer, which was earlier called for by this Court. Mr. Patel has also taken this Court through the relevant provisions, the plans, etc. to indicate that the plans were approved only after following the procedure and there is no breach of any condition whatsoever and the impugned order, therefore, may be set aside.

5. Learned Assistant Government Pleader, Mr. Poojari, has opposed this petition. However, he was at loss to contradict the report made by the District Development Officer.

6. This Court has gone through the report of the District Development Officer. It appears very clearly that there is no breach or violation of the conditions laid down in the plan submitted by the petitioner.

7. This Court [Coram: M.B. Shah, J. (as he then was)], while admitting this petition, had also observed thus:-

> "Considering the report dated 7.7.1992 of the District Development Officer, Banaskantha, it is clear that there is no breach or violation of the conditions laid down in the plan submitted by the petitioner and the land in dispute at present is open. By way of ad-interim relief, operation of the impugned order is stayed....."

8. It is very clear from the report that the disputed land is open and no construction is made thereon. There is nothing to indicate a contrary factual situation. Under the circumstances, the petition deserves to be allowed and the same is allowed. The order impugned herein being order passed by the Principal Secretary (Appeals), Revenue Department, in SRD/BKP/BNS/2/91 dated 6.3.1992 is hereby quashed and set aside. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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